

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE THE PETITION OF §
EDWARD A. KASSING, SR., FOR § No. 508, 2005
A WRIT OF MANDAMUS §
§

Submitted: November 7, 2005

Decided: January 27, 2006

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices

ORDER

This 27th day of January 2006, it appears to the Court that:

(1) The petitioner, Edward A. Kassing, Sr., seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to order his privately retained attorney to return the fee paid to him so that Kassing may retain another attorney to represent him in a pending criminal case.² The State of Delaware, as the real party in interest, has filed an answer requesting that Kassing's petition be dismissed. We find that Kassing's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) In December 2004, Kassing was charged with 43 counts of various sexual offenses. In August 2005, Kassing pleaded guilty to one

¹ Del. Const. art. IV, § 11(6); Supr. Ct. R. 43.

² *State v. Kassing*, Del. Super., Cr. ID No. 0407021126.

count of Rape in the First Degree. Kassing's attorney then filed a motion to withdraw the guilty plea and a motion to withdraw his appearance and Kassing filed a pro se motion to disqualify his attorney. On September 8, 2005, the Superior Court appointed a public defender to represent Kassing. Kassing subsequently requested the Superior Court to vacate the appointment. On November 14, 2005, the Superior Court denied Kassing's motion to withdraw his guilty plea and, on December 19, 2005, Kassing was sentenced on his rape conviction.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a lower court to perform a duty.³ As a condition precedent to the issuance of the writ, Kassing must demonstrate that: he has a clear right to the performance of the duty; no other adequate remedy is available; and the trial court has arbitrarily failed or refused to perform its duty.⁴

(4) Because Kassing has been sentenced, his criminal case is no longer pending, rendering his petition moot. Even if the petition were not moot, the Superior Court has no duty to order Kassing's privately retained attorney to return his fee so that Kassing may hire a new attorney. Kassing has, thus, failed to demonstrate that the Superior Court arbitrarily failed or refused to perform a duty owed to him. Moreover, to the extent Kassing

³ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

⁴ *Id.*

seeks to raise any issues concerning the denial of his motion to withdraw his guilty plea, he may do so on appeal. As such, Kassing has failed to demonstrate that no other adequate remedy is available to address the issues he wishes to raise.

NOW, THEREFORE, IT IS ORDERED that Kassing's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice